

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement") is entered into between Miguel and Maria Lopez, individually and on behalf of their minor daughter, Gabriela Lopez ("Plaintiffs"), and the City of Tempe ("Defendant"). Plaintiff and Defendant may be referred to generically herein as the "Parties."

AGREEMENT

The Parties agree as follows:

1. Release and Discharge

That in consideration of the full discharge of past, present and future claims arising out of the allegations set forth in Plaintiffs' Complaint, Maricopa County Superior Court Cause No. CV2009-052689, and in full and complete discharge of all personal injury claims that have been and/or could be asserted by Plaintiffs, their heirs, executors, administrators, personal representatives, successors and assigns as a result of the alleged actions or omissions of Defendant on or about June 20, 2008, Defendant agrees to pay to Plaintiffs the sum of One Million Nine Hundred Thirty-Three Thousand Six Hundred Thirty-Three Dollars (\$1,933,633.00). The Parties understand and agree that said settlement sum represents Defendants' self-insured retention amount minus Defendants' litigation costs and sums previously provided to Plaintiffs for a portion of Plaintiff Gabriela Lopez's medical treatment to date. Said settlement sum may be reduced by a commensurate amount before the final payment of the settlement sum if Defendant incurs additional litigation costs in this matter.

The final settlement sum shall be paid to Plaintiffs and their counsel on or before November 29, 2010, unless court approval of the settlement has not been obtained by that time. Upon receipt of the final settlement sum, Plaintiffs and their counsel shall cause to be purchased for the sole benefit of Gabriela Lopez an annuity with at least Eight Hundred Thousand Dollars (\$800,000.00) of the settlement sum.

It is expressly understood and agreed that this Settlement Agreement and Release is executed as a compromise of a disputed claim and that said payment contemplated herein is not to be construed as an admission of liability on the part of Defendant, its agents, servants, employees and attorneys, and any and all other persons, firms or corporations, such liability being expressly denied. This Settlement Agreement and Release shall apply to all claims, whether known or unknown, on the part of all Parties to this Agreement.

In consideration of the payment called for herein, Plaintiffs completely releases and forever discharges Defendant, its agents, servants, successors, heirs, executors and administrators, and all other persons, firms, corporations, associations or partnerships of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation whatsoever, including medical care provider liens, court costs, legal expenses and attorneys' fees which the undersigned now has or had or which may hereafter accrue on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen bodily and personal injuries resulting from the accident, casualty or event listed in Plaintiff's Complaint. This Settlement Agreement and Release shall be a full, binding and complete settlement between the Parties, save only and excepting the executory provisions of this Agreement.

2. Attorneys' Fees

Each Party hereto shall bear all attorneys' fees arising from the actions of its own counsel in connection with the Complaint, this Settlement Agreement and the matters and documents referred to herein, the filing of a Stipulation for Dismissal of the Complaint, and all related matters.

3. General Release

Plaintiffs hereby acknowledge and agree that the Release set forth herein is a general release, and they further expressly waive and assume the risk of any and all claims for damages which exist as of this date but of which Plaintiffs do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect Plaintiffs' decision to enter into this Settlement Agreement.

Plaintiffs further agree that they have accepted payment of the sum specified herein as a complete compromise of matters involving disputed issues of law and fact, and they assume the risk that the facts or law may be other than what they believe. It is understood and agreed by the Parties that this settlement is a compromise of a doubtful and disputed claim, and the payments are not to be construed as an admission of liability on the part of Defendant, by whom liability is expressly denied.

4. Court Approval

The Parties agree that this Settlement Agreement will not become effective until and unless the Parties receive court approval to effect said settlement. The Parties further agree that they will use their best efforts to seek and obtain court approval.

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5. Delivery of Dismissal with Prejudice

Concurrently with the execution of this Settlement Agreement, counsel for Defendant, has delivered to counsel for Plaintiffs a Stipulation for Dismissal with Prejudice of the civil action described above. Plaintiffs have authorized their attorney to execute said Dismissal and have it entered as a matter of record.

6. Indemnification

Plaintiffs agree to indemnify and hold harmless Defendant regarding any liens and/or claims, medical, governmental, or otherwise, existing or potential, which have or may have resulted from the claim described above. Plaintiffs further agree to fully satisfy any of the liens and/or claims. This is a material representation and Plaintiffs agree to completely indemnify and hold harmless Defendant as to any such lien and/or claim now existing and all future ones, without limitations.

7. Headings, Construction of Language

The headings contained in this Settlement Agreement are inserted for convenience of reference only and shall not be a part of or control or affect the meaning hereof. The language of this Settlement Agreement shall be construed according to its fair meaning and shall not be construed against the party responsible for drafting this Settlement Agreement or any provision hereof. Words in this Settlement Agreement shall be deemed to refer to whatever number or gender that context requires. It is the intention of the Parties that if any provision of this Settlement Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

8. Warranty of Capacity to Execute Agreement

Plaintiffs represent and warrant that no other person or entity has or has had any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement except as otherwise set forth herein; that they have the sole right and exclusive authority to execute this Settlement Agreement and receive the sum specified in it; and that they have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Settlement Agreement.

9. Entire Agreement and Successors in Interest, Amendments

This Settlement Agreement contains the entire agreement between Plaintiffs and Defendant with regard to the matters set forth herein and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each. No amendments or modifications to this Settlement Agreement shall be effective unless they are written and signed by the Parties.

10. Representation of Comprehension of Document

In entering into this Settlement Agreement, Plaintiffs represent that they have relied upon the legal advice of their attorney, who is the attorney of their own choice and that the terms of this Settlement Agreement have been completely read and explained to them by their attorney, and that those terms are fully understood and voluntarily accepted by them.

11. Attorneys' Fees

In any suit, action or proceeding, or in any arbitration, relating to this Settlement Agreement, except if such suit, action, proceeding or arbitration is resolved by settlement prior to judgment or the rendering of an arbitrator's award, the prevailing party shall be

entitled to the recovery of its reasonable attorneys' fees and costs, as determined by the court or arbitrator.

12. Governing Law

This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of Arizona.

13. Additional Documents

All Parties agree to cooperate fully and to execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

14. Effectiveness and Counterparts

This Settlement Agreement shall become effective following execution by all of the Parties and the receipt of court approval of said terms. This Settlement Agreement may be executed in any number of counterparts, all of which, when taken together, shall constitute one and the same instrument.

PLAINTIFFS:

By: [Signature]
MIGUEL LOPEZ, individually and
on behalf of GABRIELA LOPEZ as
her parent/guardian

Date: 4-12-2010

SUBSCRIBED AND SWORN to before me this 12th day of April, 2010.



[Signature]
Notary Public

My commission expires:
1-1-2013

By: Maria Lopez
MARIA LOPEZ, individually and
on behalf of GABRIELA LOPEZ as
her parent/guardian

Date: 04-12-10

STATE OF ARIZONA)
 : ss.
County of Maricopa)

SUBSCRIBED AND SWORN to before me this 12th day of April, 2010.



Cathy Cabrera

Notary Public

My commission expires: 1-1-2013

DEFENDANT:

By: _____
CITY OF TEMPE

Date: _____

Its: _____

Approved as to form:

PLAINTIFF'S ATTORNEY:

By: [Signature]

Date: 4-12-10

DEFENDANT'S ATTORNEY:

By: _____

Date: _____